

## Federal Communications Commission

DA 98-325

FCC MAIL SECTION

12-18-98  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b), )

MM Docket No. 98-23

Table of Allotments, )

RM-9226

FM Broadcast Stations. )

(Bozeman, Montana) )

## NOTICE OF PROPOSED RULE MAKING

Adopted: February 18, 1998

Released: February 27, 1998

Comment Date: April 20, 1998

Reply Date: May 5, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Bozeman Educational Access Radio ("B.E.A.R.") proposing the allotment of Channel 240C3 at Bozeman, Montana.<sup>1</sup> B.E.A.R. also requests that the channel be reserved for noncommercial educational use. B.E.A.R. indicated that it would file an application for channel 240C3 at Bozeman if the channel is allotted to the community.

2. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. See Butte Montana, 9 FCC Rcd 2180 (1994) and Buhl, Minnesota, 9 FCC Rcd 2606 (1994). According to B.E.A. R., the educational portion of the FM band is nearly closed to new authorizations due

<sup>1</sup> Although the petitioner's request was signed and an address provided, it failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of its knowledge. Section 1.52 of the Commission's rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52, regarding subscription verification. See also Amendment of Section 1.420 and 73.3584 of the Commission's Processes, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

to the proximity of two Channel 6 Stations, KTVM, Butte, Montana, and KSVI, Billings, Montana. B.E.A.R. contends that even with the minimum possible authorized class A or C3 facilities, it would be impossible for a station operating in the noncommercial band to adequately serve the community of Bozeman without causing objectionable interference to Station KTVM-TV.

3. Our review of B.E.A.R.'s proposal confirms that Channel 240C3 can be allotted to Bozeman in compliance with the Commission's minimum distance separation requirements without a site restriction.<sup>2</sup> Our analysis also confirms that B.E.A.R.'s proposal does meet the necessary criteria to reserve a channel in the commercial band as the majority of the channels in the noncommercial band. Channels 201 through 218, are precluded by Television Channel 6, while Channels 219 and 220 are precluded by domestic FM Station KGLT of Bozeman, Montana. Therefore, we believe the public interest would be served by proposing to allot Channel 240C3 to Bozeman, Montana, and to reserve the channel for noncommercial educational use.

4. In view of the fact that the proposed allotment would provide Bozeman with additional noncommercial educational service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 240C3 to Bozeman and reserve the channel for noncommercial educational use. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Bozeman, as follows:

Community	Channel No.	
	Present	Proposed
Bozeman, Montana	229C1, 236C1,	229C1, 236C1,
	260C1,*271C2	*240C3, 260C1,
	278C1	*271C2, 278C1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 20, 1998**, and reply comments on or before **May 5, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

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<sup>2</sup> The coordinates for Channel \*240C3 at Bozeman are 45-40-48 and 111-02-18.

William R. Smith, President  
Bozeman Educational Access Radio  
Post Office Box 283  
Bozeman, Montana 59771-0283

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.